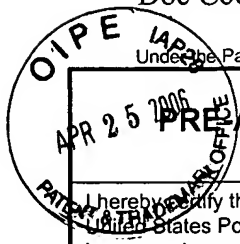


Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

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**PRE APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number (Optional)

007085.115856

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on April 21, 2006

Signature

Typed or printed name

Liza Montalvo

Application Number

10/048,139

Filed

10/1/02

First Named Inventor

Van Malssen et al.

Art Unit

1761

Examiner

Carolyn A. Paden

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)☒

attorney or agent of record.

36,425

Registration number

☐

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34

Signature

Lindsay S. Adams

Typed or printed name

212-297-5800

Telephone number

April 21, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.☒*Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Van Malssen et al.
Serial No.: 10/048,139 Art Unit: 1761
Filed: October 1, 2002 Examiner: Carolyn A. Paden
For: **METHOD FOR THE MANUFACTURE OF CHOCOLATE**
Customer No.: 29540

REQUEST FOR PRE-APPEAL BRIEF CONFERENCE

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

S I R:

Applicants hereby submit this Request for a Pre-Appeal Brief Conference along with a Notice of Appeal to the Board of Patent Appeals and Interferences from the decision of November 14, 2005 rejecting Claims 1-6.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on April 21, 2006.

Liza Montalvo

Attorney

Liza Montalvo
Signature

April 21, 2006

Date of Signature

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Account No. 50-1145.

SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 is directed to a method for the manufacture of chocolate. The method comprises preparing a cooled but still liquid chocolate mass which comprises a fat selected from cocoa butter and cocoa butter equivalents (CBE), and at least one component selected from sugar, cocoa mass and cocoa powder. The liquid chocolate mass is mixed with a liquid seed material. The mixture is then allowed to cool to a first temperature below the melting temperature of chocolate thereby producing solid chocolate. The liquid seed material that is mixed with the chocolate mass comprises a cooled-mixture from the downstream process. When preparing the liquid chocolate mass, it is heated to above a critical temperature, and subsequently cooled to a second temperature between the first temperature and the critical temperature. The cooled chocolate mass is mixed with a liquid seed material that is at a temperature above 30°C. The cooled mixture has not exceeded the critical temperature and substantially does not contain any crystalline material in the β' phase. The mixture is subsequently cooled to the first temperature to produce solid chocolate.

GROUND OF REJECTION TO BE REVIEWED

Are claims 1-6 patentable under 35 U.S.C. §103(a) in view of US 4,283,436 to Soeters et al. ("Soeters") in view of Minifie, Bernard W., "Chocolate, Cocoa and Confectionary: Science and Technology Second Edition," AVI Publishing Co., 1980 ("Minifie")?

ARGUMENTS

The Examiner rejected claims 1-6 under 35 U.S.C. §103(a) as being unpatentable over Soeters in view of Minifie.

- A. The Examiner has clearly erred because the cited combination fails to teach or suggest all the limitations of claim 1.

The standard for making out a *prima facie* case of obviousness is set forth in MPEP §2143, which provides:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

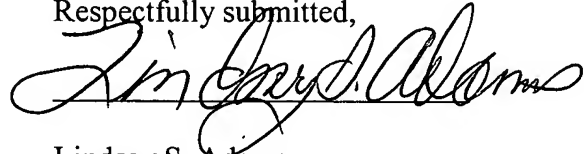
Here, a *prima facie* case of obviousness has not been set forth because the combination of Soeters and Minifie fail to provide any teaching or suggestion of all the limitations of claim 1. Soeters teaches a chocolate making procedure which entails: stirring the mass to be tempered at 60°C, lowering the temperature to 30°C and seeding the mass with 0.1% of stabilized crystals from the original pre-conched mass, i.e., an upstream process stream. (Soeter, Col. 14, lines 15-34). Minifie teaches seeding liquid chocolate at a temperature of 32-33°C with solid chocolate shavings. (emphasis added) *See* Minifie at p.147, lines 21-28. The Examiner incorrectly states that Minifie “clearly sets forth” seed material at a temperature above 30°C. *See* November 14, 2005 Office Action, p. 2. In actuality, the seed material taught in Minifie is solid chocolate shavings that can not possibly be at a temperature above 30°C because at that temperature the shavings would no longer be solid.

Additionally, the Examiner asserts that the claims as written do not define the liquid seed material as being 100% liquid seed material. However, contrary to the Examiner’s assertions, claim 1 specifically recites that the cooled mixture substantially does not contain any crystalline material in the β' phase. The β' phase crystals are those undesirable crystals in chocolate and are

substantially not present at a temperature above 30°C. Therefore, solid shavings are inherently excluded because they are at a temperature below the indicated temperature and contain seed crystals in the β' phase.

The Board is respectfully requested to find all of the presently pending claims to be allowable.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lindsay S. Adams", written over a horizontal line.

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